IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. ———

JAMES G. TIMOLAT, JR., ET AL.,

Petitioners,

versus

LEON BURAS, JR., ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

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INDEX.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	8
PROOF OF SERVICE	9
APPENDIX A—Opinion Below	10
APPENDIX B—Judgment Below	18
APPENDIX C—Order Denying Rehearing	19
APPENDIX D—Statutes and Rules Involved	20

AUTHORITIES.

Cases:

Frost Johnson Lumber Co. v. Nabors Oil & Gas Co., 149 La. 100. 88 So. 723 (1921) 4

Long Bell Petroleum Co. v. Tritico, 216 La. 426, 43 So.2d 782 (1949) 5

Mt. Forest Fur Farms of America v. Cockrell, 179 La. 795, 155 So. 228 (1934) 4

Rives v. Gulf Refining Co., 133 La. 178, 62 So. 623 (1913) 4

Sample v. Whitaker, 171 La. 949, 132 So. 511 (1930) 4, 5

AUTHORITIES—(Continued)

	Page
U. S. v. Nebo Oil Co., 190 F.2d 1003 (5th Cir. 1951)	5
Ware v. Baucum, 221 La. 259, 59 So.2d 182 (1952)	4
Wemple v. Nabors Oil & Gas Co., 154 La. 483, 97 So. 666 (1923)	4

FEDERAL STATUTES.

Federal Rules of Civil Procedure:	
Rule 8(a)	2
Rule 12(b)	2

LOUISIANA STATUTES.

Louisiana Civil Code of 1870:	
Art. 490	4
Art. 727	4
Art. 729	4
Art. 766	4
Art. 3546	5
Louisiana Revised States of 1950—9:5806	5

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on March 14, 1960.

OPINIONS BELOW.

The opinion of the District Court (R. 76) is unreported. The opinion of the Court of Appeals (R. 84) is reported at 275 F. 2d 797.

JURISDICTION.

The judgment of the Court of Appeals for the Fifth Circuit was rendered on March 14, 1960, and rehearing was denied June 3, 1960. The mandate was sent to the District Court June 23, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED.

When a complaint makes a claim which it is legally impossible to grant, do the Federal Rules nevertheless require the trial court to submit the case to the jury on another claim that might have been made?

STATUTES INVOLVED.

The determination of the question herein presented involves consideration of the Federal Rules of Civil Procedure, particularly Rules 8(a) and 12(b).

STATEMENT.

Jurisdiction in the District Court was based on diversity of citizenship. The suit involves ownership of real rights in Louisiana, and the law of Louisiana controls its determination.

By their original complaint (R. 2-20) plaintiffs asked to be decreed the owners of the mineral rights in certain Louisiana land. Defendants moved to dismiss the complaint and alternatively moved for further particulars (R. 21). The motion for further particulars was maintained (R. 22), and the complaint was thereupon amended (R. 22-28).

By their complaint as amended, plaintiffs asked to be decreed to own those certain and particular mineral rights which had been created by reservation in a June 13, 1940 sale of the lands from the individual defendants to the United States of America, on the ground that plaintiffs, and not defendants, were the true owners of the lands on June 13, 1940.[1] Article XII of the amended complaint (R. 12, 26) specifically refers to the reservation of mineral rights made by the individual defendants in their sale to the United States on June 13, 1940 and avers that such mineral rights "are the real right and immovable property . . . sued for herein". Article XII(A) of the amended complaint (R. 26) further refers to the reservation of mineral rights made by the individual defendants in their sale to the United States and claims the imprescriptible benefits accruing to the individual defendants by virtue of that reservation. These imprescriptible benefits will be explained shortly in this petition.

Defendants again filed a motion to dismiss the amended complaint (R. 28) since plaintiffs were claiming the mineral rights created by a contract between defendants and the United States to which plaintiffs were not parties. This motion was originally denied (R. 30) by the trial court but at pre-trial conference held shortly prior to the date which had then been set for trial before a jury,

[1] Because the original complaint was amended by numerous insertions, additions and deletions located by reference to the lines and pages of the original typewritten complaint, and since the page numbers of the record on appeal are different from those of the original complaint, there is printed as an appendix to petitioners' brief in support of application for rehearing in the Court of Appeals, a copy of the entire complaint as amended, with all the insertions, additions and deletions in place (R. 105).

authority was granted to renew the motion and it was then maintained[2] (R. 76). Neither before nor after the judgment of dismissal did plaintiffs make any request for permission to change the claim asserted by their complaint; they elected to stand on that claim and, in effect, insisted on presenting to the jury their right to a judgment decreeing the legally impossible.

Although the question of pleading and practice presented by this petition in no way requires a determination of Louisiana law, a one paragraph explanation of that law is indicated. Louisiana does not recognize ownership of minerals apart from the soil;[3] it only recognizes ownership of the right to explore for and produce minerals, which right is a servitude (easement) burdening the land.[4] A mineral servitude can be created only by the owner of the property which it burdens,[5] and then by a written instrument[6] executed in favor of another;[7] it cannot be brought into existence in any other manner, such as by operation of

[2] The complaint asks for an accounting for minerals produced but this demand was not urged at the pre-trial conference because no minerals have ever been produced from the land. The complaint also asks judgment for the rentals and bonuses paid to the individual defendants by the defendant oil company but plaintiffs clearly have no right to that relief, see **Mt. Forest Fur Farms of America v. Cockrell**, 179 La. 795, 155 So. 228 (1934).

[3] **Ware v. Bancum**, 221 La. 259, 59 So. 2d 182 (1952); **Wemple v. Nabors Oil & Gas Co.**, 154 La. 483, 97 So. 666 (1923); **Frost-Johnson Lumber Co. v. Nabors Oil & Gas Co.**, 149 La. 100, 88 So. 723 (1921); **Rives v. Gulf Refining Co.**, 133 La. 178, 62 So. 623 (1913).

[4] **Wemple v. Nabors Oil & Gas Co.**, 154 La. 483; 97 So. 666 (1923).

[5] Art. 729, La. Civil Code of 1870.

[6] Arts. 727, 766, La. Civil Code of 1870.

[7] Art. 490, La. Civil Code of 1870; **Sample v. Whitaker**, 171 La. 949, 132 So. 511 (1930).

acquisitive prescription (adverse possession).[8] A mineral servitude is extinguished by confusion when it and the land burdened by it come into the same ownership.[9] Every servitude is also extinguished by the operation of liberative prescription (non-user) if not exercised within a ten year period,[10] except that by special statute[11] a mineral servitude created by reservation in a sale of land to the United States is imprescriptible (not subject to loss by non-user).

The fundamental allegation of the complaint is that when the individual defendants sold the land to the United States on June 13, 1940, and reserved the mineral rights sued for, the land was actually owned by plaintiffs. Based upon such alleged ownership of the land, plaintiffs claim the right to be decreed the owners of the very mineral servitude reserved by defendants in their sale to the United States. The complaint as amended makes this claim in Articles XII, XII(A) and XII(B). But if plaintiffs owned the land on June 13, 1940, then the United States acquired no title from defendants; and if defendants had no title to convey to the United States, no mineral servitude could have been created, because, as pointed out above, a mineral servitude in Louisiana can be created only by a title from the owner of the land.

On appeal, the judgment of the District Court was reversed (R. 84), not upon the ground that plaintiffs were entitled to a decree recognizing them as the owners of the

[8] **U. S. v. Nebo Oil Co.**, 190 F.2d 1003 (5th Cir. 1951); **Long Bell Petroleum Co. v. Tritico**, 216 La. 426, 43 So. 2d 782 (1949).
[9] Revised Civil Code 787(3), **Sample v. Whitaker**, 171 La. 949, 132 So. 511 (1930).
[10] Art. 3546, La. Civil Code of 1870.
[11] La. R.S. of 1950, 9:5806.

mineral servitude reserved by defendants from the United States, but upon the ground that the plaintiffs were entitled to have the case tried as presenting a demand for cancellation of that very servitude (R. 90).

REASONS FOR GRANTING THE WRIT.

The holding of the Court of Appeals in this case will inevitably have the effect of preventing a plaintiff from choosing the claim which the plaintiff wishes to assert, and will substitute the guess of the district judge for the studied determination of the plaintiff.

In the instant case, plaintiffs have never, in pleading, argument, or brief, expressed the wish to cancel defendants' servitude. To the contrary, and for reasons which they must consider good, they have persistently alleged that they own that mineral servitude or are entitled to receive its benefits. A demand to be recognized as the owner of something necessarily implies its existence and is, therefore, the antithesis of a claim that the thing be destroyed by cancellation.

What the Court of Appeals has done is to express its belief that the plaintiffs should have demanded the cancellation of the servitude, and the court has, in effect, directed plaintiffs to file amended pleadings to make such demand.

The plaintiffs had ample opportunity in the District Court to make that claim if they desired to do so. They clearly evinced their purpose to stand on the claim made in their amended complaint. The District Judge had no choice, therefore, but to dismiss their suit or to

order them to make some other claim, which latter, it is submitted, he had no right to do, and should not be held to have erred in failing to do.

Petitioners recognize that, under the Federal Rules of Civil Procedure, no complaint should be dismissed if relief can be granted upon the claim made by the plaintiff. Yet the Rules do not demand that a complaint be reformed by the trial court *sua sponte* if only the court believes that plaintiff might have presented some other claim upon which relief might have been granted. But such is the effect of the holding by the Court of Appeals.

The impossibility of the resulting situation is disclosed by an analysis of the present status of this suit. Plaintiffs have studiously elected not to assert a claim to cancel defendants' mineral servitude. They may, for very good reasons, not apparent upon the face of this record, refuse to do so. Although the mandate of the Court of Appeals was sent to the District Court on June 23, 1960, plaintiffs have not amended their complaint or in any other manner indicated their desire to assert a claim to cancel defendants' mineral servitude. Will the District Court be required to force them to try that claim? If plaintiffs decline to amend their complaint, are plaintiffs bound by the opinion of the Court of Appeals even though they have never demanded the cancellation of anything? Should the District Court again dismiss the suit on the ground that their complaint makes a legally impossible claim and they have refused either to disavow that claim or specifically to make the claim suggested by the Court of Appeals?

The holding of the Court of Appeals will result in district courts being generally required to entertain and proceed with any litigation, notwithstanding the legal impossibility of granting any relief upon the claim asserted, if only the court can conceive of plaintiff making some other claim upon which plaintiff might be entitled to relief.

CONCLUSION.

Such procedure will greatly increase the burden of trial judges in disposing of litigation and is bound to retard the judicial process. It will also produce confusion on the part of judges and attorneys. In the interest of promoting the efficient administration of justice in our overburdened trial courts, and because of the importance of this matter in our trial courts generally, it is respectfully submitted that a writ of certiorari should be granted.

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PROOF OF SERVICE

I, CHARLES D. MARSHALL, one of the attorneys for James G. Timolat, et al., petitioners herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the day of August, 1960, I served copies of the foregoing Petition for Certiorari to the Court of Appeals for the Fifth Circuit and the United States District Court for the Eastern District of Louisiana on the several parties thereto, as follows:

1. On Leon Buras, Jr., et al., respondents, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

To: E. Drew McKinnis, Esq.,
Attorney for Leon Buras, et al.,
2887 Plank Road,
Baton Rouge, Louisiana..

To: Edward B. Benjamin, Jr., Esq.,
Attorney for Leon Buras, et al.,
Whitney Building,
New Orleans 12, Louisiana.

Attorney for The California Company,
1122 Whitney Building,
New Orleans 12, La.

APPENDIX A.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17953

LEON BURAS, JR., ET AL.,

Appellants,

versus

JAMES G. TIMOLAT, JR., ET AL.,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(March 14, 1960.)

Before TUTTLE and CAMERON, Circuit Judges, and WRIGHT, District Judge.

CAMERON, Circuit Judge: Appellants, Leon Buras, Jr., et al., plaintiffs below, appeal from an order

(and final judgment based thereon) granting the motion of appellees, James G. Timolat, Jr., et al., defendants below,[1] to dismiss plaintiffs' complaint as amended for failure to state a claim upon which relief can be granted.[2] The court below did not set forth the grounds upon which its order and judgment rested, and our decision will be based upon the propositions relied upon by the parties in the argument before us.

According to the complaint as amended, plaintiffs are the true and lawful owners of the lands involved in the suit, including the minerals, their ownership being based upon record title, acquisitive prescription and estoppel. They aver that the individual defendants claim, but do not in reality own, title to said lands; and that defendants, in the year 1940, essayed to sell said lands to the United States of America for a wildlife reserve, but reserving in themselves the oil, gas and minerals and oil, gas and mineral rights. They aver further that the individual defendants executed an oil and gas lease on March 15, 1943 and an amended oil and gas lease on March 4, 1953 in favor of the defendant, The California Company, under which California was "actually engaged in exploration and production;" and charge further that "all defendants herein are now and for some time have been appropriating for their own benefit and gain the oil, gas and other minerals, and oil, gas and mineral rights which comprise the real right and immovable property described" in paragraph II of the complaint and which constitute the subject matter of this action.

[1] In this opinion, we will follow the lead of the briefs, referring to the litigants hereafter as plaintiffs and defendants.

[2] Jurisdiction is based upon diversity of citizenship, 28 U.S.C.A. §1332.

The prayer of the complaint is for judgment in plaintiffs' favor "(1) declaring petitioners to be the true and lawful owners of the oil, gas and other minerals, and oil, gas and mineral rights . . .; (2) declaring that petitioners, as owners, are entitled to the full and undisturbed possession of the real right and immovable property described in paragraph II; (3) ordering that the defendants deliver possession thereof to petitioner; (4) ordering that an accounting be rendered by defendants for bonuses, rentals, and royalties received and for all oil, gas and other minerals taken by defendants, or either of them by their claim to and appropriation of the real right and immovable property described in paragraph II; and (5) ordering that after such an accounting has been duly made, petitioners be granted a money judgment in their favor against defendants for the full amount and value of all bonuses, rentals, and royalties received and for all oil, gas, and other minerals thus shown to have been taken or produced by defendants, or either of them, together with legal interest thereon from date of judicial demand." Plaintiffs further prayed for general relief.

The court below first heard and denied defendants' motion to dismiss the original complaint, but granted the alternative motion of defendants for a more definite statement. This brought forth the amendment to the complaint, which was met by a similar motion to dismiss for failure to state a claim and in the alternative for a more definite statement. This motion was at first denied. The defendants then answered and there were various requests

for admissions and interrogatories by the several parties and answers thereto, following which the court granted the motion to dismiss for failure to state a claim.[3]

We test the sufficiency of plaintiffs' pleadings under the universally accepted rule so often repeated by this Court: "It is . . . elementary that a complaint is not subject to dismissal unless it appears to a certainty that the plaintiff cannot possibly be entitled to relief under any set of facts which could be proved in support of its allegations. Even then, a court ordinarily should not dismiss the complaint except after affording every opportunity to the plaintiff to state a claim upon which relief might be granted." ***Black v. Trustee, First National of Mobile, et al.***, 255 F. **2d 373, 375**.[4]

It seems clear that it was error for the court below to dismiss the complaint setting forth the facts outlined above. In fact, defendants admit in their brief what they stated in oral argument: ". . . if defendants should extract and remove any minerals from the land plaintiffs

[3] There is some discussion in the briefs of the defendants' answer and of some of the answers to interrogatories and requests for admissions. The action was disposed of by the court below, however, solely on the question whether the complaint as amended stated a claim upon which relief can be granted (Rule 12(b)(6) F.R.C.P.); and it is before us on the propriety of that action alone.

[4] The following cases from this Circuit state the same rule: Howham v. Standard Oil Co., 1959, 263 F. 2d 499; Carass v. Outboard Marine Corp., 1958, 252 F. 2d 690; Baldwin v. Morgan, 1958, 251 F. 2d 780; Moritt v. Fine, 1957, 242 F. 2d 128; Millet v. Godchaux Sugars, 1957, 241 F. 2d 264; Fair v. United States, 1956, 234 F. 2d 288; Byrd v. Bates, 1955, 220 F. 2d 480; King Edward Emp. Fed. Credit Union v. Traveler Indemnity, 1953, 206 F. 2d 726; Des Isles v. Evans, 1955, 200 F. 2d 614

could sue for the value of the minerals so taken. . . ."[5] This portion of the relief would render the complaint immune from attack for failure to state a claim. Moreover, if, as the parties seemed to concede in the argument before us, California had not in fact begun drilling operations but merely claimed the right and held the intention so to do, plaintiffs would have the right, if afforded the opportunity, to pray that the court declare[6] that California does not possess the right to extract or remove oil from said premises, it being undisputed that an actual justiciable controversy does exist between plaintiffs on the one side and California and the other defendants on the other.

Defendants rely heavily upon the decision of the Supreme Court of Louisiana in *Wemple v. Nabors Oil & Gas Co.*, 1923, 97 So. 666,[7] as authority for the principle that the State of Louisiana recognizes no estate in lands other than simple ownership of the soil and servitudes thereon, including usufruct. Plaintiffs stake their case chiefly upon LRS 9:1105 and the decision of the Louisiana Supreme Court in *Dixon v. American Liberty Oil Co.*, 1955, 77 So. 2d 533, and upon the contention that the whole (perfect title) necessarily includes all of its parts (i. e., mineral interests).

We do not find it necessary to explore the intricacies of Louisiana's laws governing real property, or to

[5] The concession assumes, contrary to the averments of the complaint, that minerals had not in fact been extracted or removed from the land.

[6] Under 28 U.S.C.A. §2201 and Rule 57 F.R.C.P., and cf. Rule 54(c) F.R.C.P.

[7] And they cite many statutes of the State of Louisiana including Sections RS 9:1105 and 9:5806 of the Revised Statutes of Louisiana; and Articles 488, 490, 655, 727, 728, 729, 749, 765, 766, 788, 2217, 2681, and 2682 of the Civil Code of Louisiana.

undertake to reconcile or distinguish the *Nabors* and *Dixon* cases. We do not interpret any of the statutes or decisions placed before us as casting any doubt upon the postulate that perfect ownership of land includes the minerals in it.[8]

Even *Wemple* seems to recognize this (97 So. at p. 667): ". . . our civil law, . . . recognizes but two kinds of estates in lands, the one corporeal and termed ownership, being the dominion over the soil and all that lies directly above and below it (C.C. art. 505); . . ." And *Dixon* (77 So. 2d at pp. 536-537) is to the same effect: "But, until they [the minerals] are severed, possession and ownership of the surface carries with it the right to reduce the minerals to possession, and such right may be protected by a possessory action or one in jactitation. . . ."[9]

The complaint, in our opinion, charges that plaintiffs and their predecessors in title always have been

[8] As to this, defendants' brief contains the following statement. "The allegations of this complaint are that plaintiffs have perfect ownership of the land. As such owners they enjoy the unquestioned right to do whatever they wish with the land including the right to remove minerals therefrom. This right, however, does not make them owners of the minerals nor would it constitute a servitude upon the land. It neither adds to nor detracts from what the Louisiana law defines as perfect ownership. Our appreciation of the judgment of the District Court is that it fully recognized plaintiffs' alleged rights of perfect ownership."

[9] Following the foregoing quotation, it is stated in Dixon: "But a mineral lease is not a mineral servitude and does not produce the same legal effect for, though it is characterized as a real right in LSA-RS. 9:1105, it is merely a contract which permits the lessee to explore for minerals on the land of the lessor in consideration of the payment of a rental and/or bonuses. It places no charges whatever on the land and cannot be put in the same classification as a mineral servitude, which is an incorporeal immovable that attaches to the land itself."

and are the owners of a perfect title to the land; that the defendants do not now and never have owned any title; that defendants' conveyance to the United States transferred no title to it, and their oil, gas and mineral leases to California conveyed no interest. We do not understand that plaintiffs are endeavoring to acquire by this action ownership of the servitude claimed by California under the leases from defendants. We understand rather that plaintiffs are seeking to cancel whatever claim California asserts on the ground that California owns nothing, perfect title being in plaintiffs.

It follows that the court below can, in a trial on the merits, determine the state of the title to these minerals and the rights of the parties in them. What we have said is in justification of our holding that, under the cases cited, the district court should not have dismissed the action for failure to state a claim. We express no opinion as to what the holding of the trial court should be after it has, under such amended pleadings as the parties may elect to file, proceeded by appropriate means to discover the facts and apply the Louisiana laws to them.

The question of the United States as an indispensable party was adverted to but briefly in the argument before us, but will doubtless arise in a trial upon the merits. The law governing such a situation is well settled in this Circuit. *Hudson v. Newell*, 1949, 172 F. 2d 848; *MacIntosh v. Marks Estate*, 1955, 225 F. 2d 211; *Estes v. Shell Oil Co.*, 1956, 234 F. 2d 847; and *Stewart v. United States*, 1957, 242 F. 2d 49. The situation dealt with by us in *Stewart supra* and in *Leiter Minerals, Inc. v. United States*, 1957, 224 F. 2d 381, modified and af-

firmed in *Leiter Minerals, Inc. v. United States, et al.*, 352 U.S. 220, is not likely to arise, because the mineral interests here involved did not come through the United States and it is claiming no interest in them.

The judgment of the court below is reversed and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

APPENDIX B.

JUDGMENT BELOW.

Extract from the Minutes of March 14, 1960

LEON BURAS, JR., ET AL.,

No. 17953. versus

JAMES G. TIMOLAT, JR., ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court;

It is further ordered and adjudged that the appellees, James G. Timolat, Jr., and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

* * * * * *

APPENDIX C.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 17,953

LEON BURAS, JR., ET AL.,

Appellants,

versus

JAMES G. TIMOLAT, JR., ET AL.,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(June 3, 1960)

ON PETITION FOR REHEARING

Before TUTTLE and CAMERON, Circuit Judges, and WRIGHT, District Judge.

PER CURIAM:

IT IS ORDERED that the appellee's petition for rehearing be, and it is hereby DENIED.

APPENDIX D.

FEDERAL RULES OF CIVIL PROCEDURE.

Rule 8(a)

(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

Rule 12(b)

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more

other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

LOUISIANA CIVIL CODE OF 1870.

Article 490.

Ownership is divided into perfect and imperfect.

Ownership is perfect, when it is perpetual, and when the thing is unincumbered with any real right towards any other person than the owner.

On the contrary, ownership is imperfect, when it is to terminate at a certain time or on a condition, or if the thing, which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use or servitude.

When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership.

Article 727.

Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose use is or may be continual without the act of man.

Such are aqueducts, drain, view and the like.

Discontinuous servitudes are such as need the act of man to be exercised.

Such are the rights of passage, of drawing water, pasture and the like.

Article 729.

The right of imposing a servitude permanently on an estate belongs to the owner alone.

Article 766.

Continuous nonapparent servitudes, and discontinuous servitudes, whether apparent or not, can be established only by a title.

Immemorial possession itself is not sufficient to acquire them.

Immemorial possession is that of which no man living has seen the beginning, and the existence of which he has learned from his elders.

Article 3456.

The rights of usufruct, use and habitation and servitudes are lost by nonuse for ten years.

LOUISIANA REVISED STATUTES OF 1950.

9:5806.

A. When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm, or corporation, and by the act of acquisition, order, or judgment, oil, gas, or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas or other minerals or royalties, still in force and effect, the rights so reserved or previously sold shall be imprescriptible.